

**IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble **Justice Prasenjit Biswas**

C.O. No. 4409 of 2015

Bakkeswar Sarkar

-Versus-

Nekjan Nechha Bewa & Anr.

For the Petitioner : **Mr. Sarbananda Sanyal,
Ms. Paulami Chakraborty.**

For the Opposite Parties :

Hearing concluded on : **20.03.2024**

Judgment On : **02.04.2024**

Prasenjit Biswas, J:-

1. Lamenting the wrong delay in execution of decrees the Hon'ble Supreme Court recently observed in case of **Mumtaz Yarud Dowla Wakf Vs. Dadam**

Balakrishna Hotel Pvt. Ltd. reported in **2023 SCC OnLine SC 1378**

interalia that:-

“2. A legal journey adopted by the appellant with periodical stoppages orchestrated in the process at behest of respondent no(s). 1 and 2 brought the lis back to the place where it started, forcing it to undertake a fresh guard by the impugned order.

3. This case is a classic example of the unfortunate situation taken note of and lamented by Right Honorable Sir James Colvilbe in General Manager of the Raj Durbhunga v. Maharajah Coomar Ramaput Sing, 1872 SCC OnLine PC 16,

“These proceedings certainly illustrate what was said by Mr. Doyne, and what has been often stated before, that the difficulties of a litigant in India begin when he has obtained a Decree...

4. The situation not only continues but has become more prevalent.”

2. Feeling aggrieved and dissatisfied with the order dated 18th September, 2014 passed by the learned Additional District Judge, Tehatta, Nadia passed in connection with Civil Revision Case No. 6/2010 the present petitioner has filed this instant application under Article 227 of the Constitution of India. By passing the impugned order the learned 1st Revisional Court affirmed the order passed by the Ld. Civil Judge (Junior Division) Tehatta, Nadia in Title

Execution Case No. 5/2009 in which petition filed by the present petitioner under Section 47 of the Code of Civil Procedure was rejected.

3. Despite service affected upon the opposite parties they did not venture to appear and contest the present revisional application.

4. The only question for consideration in this revisional application is whether the executing Court is justified in passing the impugned order.

5. The execution case being T. Exn. No. 5/2009 was filed by the respondent no. 1 (herein) with a prayer for execution of the decree passed in T.S. 80/82 passed by the learned Additional Civil Judge (Jr. Division), Krishnagar on 25.05.1992 against the proforma opposite party no 2 (herein). It is the case of the petitioner that he was not impleaded as a party to that title suit although proforma opposite party no. 2 (herein) has transferred her share in respect of the suit property by executing registered deeds of sale dated 11.04.83 and 16.04.96 and gave possession to him. Accordingly, the present petitioner became the co-sharer in respect of the suit property. It is stated by the petitioner that being a transferee/purchaser of the properties to the suit he filed an application under Section 47 of the Code of Civil Procedure but the same was rejected by the learned Trial Court holding that being a stranger petitioner he is not entitled to file such application before the Court. Being aggrieved by the order passed by the Trial Court the petitioner preferred an application under Section 115A of the Code of Civil Procedure before the 1st Revisional Court but the same was rejected by the Court by passing the order under challenge.

6. It is stated by the petitioner that as soon as he came to know about the execution of the decree he filed another suit with a prayer for partition claiming himself to be one of the co-sharers in respect of the suit property before the Court of Learned Civil Judge (Senior Division) 1st Court at Krishnanagar and the same was registered as Title Suit No. 297 of 2009. At the time of hearing learned Counsel appearing on behalf of the petitioner assailed that the Trial Court as well as the Revisional Court acted illegally in rejecting the application of the petitioner filed under Section 47 of the Code of Civil Procedure without considering the fact that he became co-sharer by dint of purchase from the opposite party no. 2 (herein) Jahura Khatoon and as such he has every right to file an application under Section 47 of CPC challenging the executability of the decree.

7. It is profitable to quote the observation of the Hon'ble Apex Court in case of **Pradeep Mehra vs. Harijivan J. Jethwa (since Deceased Thr. Lrs.) and Others** reported in **2023 SCC OnLine SC 1395** which entails interalia at paragraph 10 to 13:-

“10. A bare perusal of the aforesaid provision shows that all questions between the parties can be decided by the executing court. But the important aspect to remember is that these questions are limited to the “execution of the decree”. The executing court can never go behind the decree. Under Section 47, CPC the executing court cannot examine the validity of the order of the court which had allowed the execution of the

decree in 2013, unless the court's order is itself without jurisdiction. More importantly this order (the order dated 12.02.2013), was never challenged by the tenants/judgment debtors before any forum.

11. The multiple stages a civil suit invariably has to go through before it reaches finality, is to ensure that any error in law is cured by the higher court. The appellate court, the second appellate court and the revisional court do not have the same powers, as the powers of the executing court, which are extremely limited. This was explained by this Court in Dhurandhar Prasad Singh v. Jai Prakash University and Others (2001) 6 SCC 534, in para 24, it had stated thus:

“24. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus, it is plain that executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing.”

12. This Court noted further:

“..... The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any other remedy available

under law on the ground that the original defendant absented himself from the proceeding of the suit after appearance as he had no longer any interest in the subject of dispute or did not purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law.

13. The reality is that pure civil matters take a long time to be decided, and regretfully it does not end with a decision, as execution of a decree is an entirely new phase in the long life of a civil litigation. The inordinate delay, which is universally caused throughout India in the execution of a decree, has been a cause of concern with this Court for several years. In *Rahul S. Shah v. Jinendra Kumar Gandhi and Others* (2021) 6 SCC 418, this Court had observed that a remedy which is provided for preventing injustice (in the Civil Procedure Code) is in fact being misused to cause injustice by preventing timely implementation of orders and execution of decrees. Then, it had observed as under:

“23. The execution proceedings which are supposed to be a handmaid of justice and subserve the cause of justice are, in effect, becoming tools which are being easily misused to obstruct justice.”

8. In case of **Pradeep Mehra (supra)** Hon’ble Apex Court observed and clarified that an execution proceeding works in different stages and if the judgment debtors have failed to take an objection and have allowed the preliminary stage to come to an end then the matter has moved to the next

stage and the judgment debtor cannot raise such objection subsequently, thereby attending to revert back to an earlier stage of the proceeding. In that case Hon'ble Apex Court further expressed his concern in accordance with inordinate delay cause in execution of decree observing it as an issue throughout the nation.

9. In case of **Vedic Girls Senior Secondary School Arya Samaj Mandir, Jhajjar Vs. Smt. Rajwanti & Ors.** reported in **(2007) 2 WBLR (SC) 1** Hon'ble Apex Court observed that:-

“24. Having heard the Learned Counsel of the respected parties we are unable to agree with the reasoning both of the High Court as also the Executing Court since the decree does not indicate the basis on which the dues of the Respondent No. 1 was to be calculated. When there were conflicting claims regarding the salary payable to the Respondent No. 1, the said respondent ought to have taken steps to amend the prayers in the plaint so that proper relief could be provided to her. The same not having been done, the Executing Court had no jurisdiction to go beyond the decree as passed, despite the fact that the Trial Judge had noticed the dispute and had even decided the same.”

10. The Supreme Court highlighted the significance of finality and res judicata in legal proceedings, stressing on the concerns of undue delays in execution. It was held that the Executing Court holds limited authority and is

barred from revisiting the previously settled issues that have already attained finality in the decree.

11. The word 'execution' is not defined in the C.P.C. It simply means the process for enforcing the decree that is passed in favour of the decree holder. Execution of a decree or an order or implementation or enforcement of such decree or orders, these are important steps since they are concerned with realization of the fruits of the decree or the orders as the case may be. Quite often, it is said that the difficulty for the decree-holder would commence after obtaining decree since there would be several obstacles, the procedural technicalities, which may come in the way, several obstructions may be created for realization of the fruits of the decrees or the orders.

12. The settled legal position is that the executing court can go behind a decree only if there was lack of inherent jurisdiction and not on the ground that there was erroneous exercise of jurisdiction. It will not be open to a party to challenge a judgment when it is sought to be enforced on the ground that the judgment is based on wrong conclusions or on erroneous findings or on wrong application of law. As the remedy of the aggrieved party in such cases is to challenge the same in appeal or revision as the case may be and not to challenge it when it is sought to be enforced. Thus the petitioner's challenge in this case against the judgment can not be sustained. In the present case, lack of jurisdiction was not pleaded by the petitioner. The conduct of a party assumes significance. If a party is likely to have an undue advantage, despite the availability of an opportunity to raise a plea at an earlier point of time, it

should not be permitted to do so during the execution proceedings. In other words, a plaintiff shall not be made to suffer by the act of the petitioner who is nothing but stranger to the suit.

13. An executing court has limited powers of only executing a decree that has been passed by the court. The executing court cannot go into the decree or decide issues that ought to have been looked into by the deciding court. Any such enquiry or change made in the decree is beyond the jurisdiction of the executing court and is clearly liable to be set aside by a higher court. It is settled law that an executing court can only assist the decree holder in enforcing the decree and not beyond that.

14. Undoubtedly, Section 47 of the Code of Civil Procedure empowers the Executing Court to decide all the questions arising between the parties to the suit in which the decree is passed when such question relates to the execution, discharge or satisfaction of the decree. In other words, the Executing Court is empowered to deal with all the points relating to execution or discharge or satisfaction of a decree. The provision speaks of eventualities subsequent to issuance of the decree. It does not relate to the causes arising prior to issuance of the decree. It does not include questions like entitlement or right of the parties to get the decree of the nature passed. The question to be dealt with by the Executing Court, therefore, should, be necessarily relating to the execution part of the decree, albeit lawful and executable decree and not the one which is a nullity.

15. The Executing Court must execute the decree as it stands and it cannot go into the correctness or validity of the decree except when the decree is a nullity and if the decree is of a Court with jurisdiction, the Executing Court is bound to execute the decree as it stands. The question as to the validity of the decree cannot be agitated in execution proceedings because it is not a question which relates to the discharge or the satisfaction of the decree. It is only where a decree is passed by Court which lacks inherent jurisdiction to pass the decree that the objection to the validity of the decree may be raised in a proceeding in execution.

16. The Supreme Court in the matter of **Shivshankar Gurgar v. Dilip**, reported in **(2014) 2 SCC 465** following its earlier judgment in the matter of Deepa Bhargava Vs. Mahesh Bhargava has held that the executing court neither can go beyond the decree nor it has jurisdiction to modify the decree, it has to execute the decree as it is. Relevant paragraph of the report states as under:-

“13.2. In our opinion, the order dated 23-11-2005 virtually amounts to the modification of the decree and is without jurisdiction on the part of the executing court, therefore, a nullity. It is a settled principle of law that the executing court cannot go beyond the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is. This Court in Deepa Bhargava v. Mahesh Bhargava [(2009) 2 SCC 294; (2009) 1 SCC (Civ) 505] held thus : (SCC p. 298, para 9)

“9. There is no doubt or dispute as regards interpretation or application of the said consent terms. It is also not in dispute that the respondent-judgment-debtors did not act in terms thereof. An executing court, it is well known, cannot go behind the decree. It has no jurisdiction to modify a decree. It must execute the decree as it is.”

17. Thus, in the aforesaid judgments legal view has been crystallized by the Supreme Court that the Executing Court cannot go beyond the decree in absence of challenge to the decree in appropriate proceeding and such a question that decree is a nullity cannot be raised and decree is binding between the parties.

18. Accordingly, there is no merit in the application filed by the petitioner challenging the impugned order dated 18th September, 2014 passed by the learned Additional District Judge, Tehatta, Nadia and as such it is liable to be dismissed.

19. C.O. being no. 4409 of 2015 is hereby dismissed but without any order as to costs.

20. The order dated 18th September, 2014 passed by the learned Additional District Judge, Tehatta, Nadia passed in connection with Civil Revision Case No. 6/2010 is hereby affirmed.

21. Urgent Photostat certified copy of this order, if applied for, be given to the parties on payment of requisite fees.

(Prasenjit Biswas, J.)